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In the Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF CALIFORNIA, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE MODESTO IRRIGATION DISTRICT AND TURLOCK IRRIGATION DISTRICT AS *AMICI CURIAE* IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GIBSON, DUNN & CRUTCHER
JOEL S. MOSKOWITZ*
GREGORY J. KERWIN
1801 California Street
Suite 4200
Denver, Colorado 80202
(303) 298-7200
Attorneys for *Amici Curiae*, the Modesto Irrigation District and Turlock Irrigation District
* *Counsel of Record*

Of Counsel:
WARREN F. GANT, *General Counsel*
Modesto Irrigation District

ROGER K. MASUDA, *General Counsel*
Turlock Irrigation District

19 pp

QUESTION PRESENTED

Should this Court overrule *First Iowa Hydro-Electric Coop. v. Federal Power Comm'n*, 328 U.S. 152 (1946), and more than 40 years of Supreme Court precedents and administrative practice so that the State of California can assume control over hydroelectric power projects already constructed or planned for construction?

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INTEREST OF *AMICI CURIAE*

This Brief is filed pursuant to Supreme Court Rule 36 by the Modesto Irrigation District and Turlock Irrigation District ("the Districts") as *amici curiae* in support of Respondent, the Federal Energy Regulatory Commission ("FERC"). The Districts are irrigation districts organized and operated under the California Water Code. The Districts are agencies of the State of California exercising governmental functions, *see* Cal. Water Code § 20570; this brief is sponsored by the chief legal representative of each irrigation district. Consequently, no consents to the filing of this brief are required under this Court's Rule 36.4.[1] These Districts *oppose* the position advocated in the State of California's petition for certiorari as ill-advised, unworkable, and contrary to Congress' intent and longstanding legal precedent.

[1]Nevertheless, the Districts do have the consent of the parties to file this brief.

The Districts hold an FERC license for the construction and operation of a 165 megawatt hydroelectric plant on the Tuolumne River in California, which became operational in 1971 and was built at an original cost of about $92.5 million. By amendment to the license, FERC recently authorized the addition of a fourth generating unit at the plant and approved amendments to provide for additional fish studies agreed upon by the Districts and the California Department of Fish and Game and the U.S. Fish and Wildlife Service. Article 37 of the license sets forth the minimum flow release schedule for the protection and maintenance of fish below the dam under normal, dry, and critically dry runoff conditions. The normal water year schedule was modified by agreement of the Districts and the California Department of Fish and Game as authorized by Article 37 and the modified schedule was approved by FERC in the above license amendment. FERC retains authority to make further changes as may be required, upon notice and an opportunity for hearing.

From 1971 until 1985, the Districts operated their jointly owned project, called the "New Don Pedro Project" (hereinafter "New Don Pedro") in harmony with the state agency responsible for administering state water rights, the State Water Resources Control Board ("State Board"), represented by the Petitioner. Since 1985, the State Board has taken the position that it has the power to impose fish water release requirements different from and more burdensome than FERC requirements, and the right—on an after-the-fact basis—to attach conditions to the outstanding FERC license for New Don Pedro. The State Board's justification for this position has been the public trust doctrine, which under California law purports to allow reallocation of water from vested rights to so-called public uses. As *amici curiae* in this proceeding, the Districts oppose any change in the supremacy of FERC hydroelectric power licenses and support the Ninth Circuit's determination that the holders of such licenses, once issued, are free from interference by state agencies in areas covered by the FERC license.

SUMMARY OF ARGUMENT

In the court below, the State of California boldly sought to usurp through "state preemption" the congressionally mandated powers of FERC and take over the management of new and existing hydroelectric projects on the navigable rivers of California. The Ninth Circuit rejected California's position based on this Court's ruling in *First Iowa Hydro-Electric Coop. v. Federal Power Comm'n*, 328 U.S. 152 (1946), which held that Congress intended the Federal Power Commission (now FERC) to have exclusive licensing and supervisory authority over hydroelectric plants on navigable waterways. In *First Iowa*, the Court examined the text of the statute, its structure, purpose and legislative history, and rejected the claim of the State of Iowa that a state veto and dual sovereignty were intended by Congress.

California contends that the time has come for this Court to overrule *First Iowa*. Yet it cites no persuasive reason for this Court to do so. The Court has consistently adhered to the view it expressed in *First Iowa*. In its Ninth Circuit briefs, the State purported to find "new" legislative history that justified its view, but as the Ninth Circuit recognized, 877 F.2d at 749-50; Pet. App. A-12 to A-13, the very extracts from the congressional debates the State cited were considered by this Court in 1946 and found not persuasive.

The State claims that *California v. United States*, 438 U.S. 645 (1978), justifies departure from *First Iowa*, neglecting to concede that this Reclamation Law case is now nearly 12 years old and that *First Iowa* has been thereafter repeatedly cited as authoritative by this Court. *California v. United States* restored to Section 8 of the Reclamation Law the meaning found in it from 1902 to 1958; the State would use that case to deprive the Federal Power Act of the settled meaning it has enjoyed since 1946.

The dual sovereignty that the State seeks in its petition for certiorari is unworkable. For example, FERC established a June bypass flow of 11 cubic feet per second ("cfs") for the Rock Creek project, thereby simultaneously allocating the remaining flow for hydropower generation. The State Board

later decreed a June bypass flow rate of 60 cfs. If the FERC mandated minimum bypass flow is 11 cfs, it cannot also be 60 cfs because the 60 cfs bypass flow results in a different allocation of water between the two competing uses. One agency must decide how much water shall be released for the protection of fish below a hydroelectric project. California says it should decide; the statute, this Court's precedents and 40 years of history say it should not—FERC should decide. This Court should deny the State's petition because there is no reason for the Court to reopen the issues settled long ago in *First Iowa*.

REASONS WHY THE PETITION SHOULD BE DENIED

I.

CALIFORNIA HAS NOT PRESENTED ANY VALID REASON FOR THIS COURT TO DEPART FROM ITS LONGSTANDING CONSTRUCTION OF THE FEDERAL POWER ACT IN *FIRST IOWA*

In the first two decades of this century, a great public debate raged over what the federal government's proper role should be in the development and administration of hydroelectric power. That debate brought to bear the views of some of the great minds of that era including Theodore Roosevelt and Gifford Pinchot. *See, e.g.*, G. Pinchot, *The Long Struggle For Effective Federal Water Power Legislation*, 14 Geo. Wash. L. Rev. 9 (1945). In that heated and bitter debate the conservationists succeeded in persuading Congress to delegate comprehensive authority for the power development of the nation's rivers to the Federal Power Commission. In the Federal Power Act of 1920 ("FPA"),[2] Congress adopted the comprehensive federal structure sought by conservationists.

In 1946 this Court carefully reviewed the great debate leading to the FPA and confirmed that Congress intended for the Federal Power Commission to exercise the full measure of federal authority in administering power development of

[2]41 Stat. 1063 (1920).

the nation's rivers. *See First Iowa Hydro-Electric Coop. v. Federal Power Comm'n*, 328 U.S. 152 (1946). The Court concluded that Congress intended for states to exercise only an advisory role in recommending to the FPC how to manage power developments within their borders.[3]

In the nearly 70 years since Congress' passage of the FPA and the more than 40 years since this Court confirmed Congress' intent to equip the FPC with a full measure of federal authority, Congress has not chosen to amend the FPA to permit the states to exercise a veto over the decisions of the FPC.

The massive power projects that Congress envisioned came to fruition and now dominate the major navigable rivers of the country. The diverse water works and power networks managed by the FERC transcend state boundaries, spanning entire river basins and requiring coordination at all levels of stream flows, water storage, and power generation. As an impartial regulator within our federal system, the FERC listens and responds carefully to the concerns of the states in the interstate management of the nation's water resources. Yet, as Congress intended and this Court confirmed long ago, it is the federal agency and not the individual states that ultimately moderates the regulation of these federally approved power projects. In reliance on the administrative structure that Congress protected from parochial control by the several states, hydropower project sponsors (and their bondholders) have invested billions of dollars to create and maintain the massive power system Congress envisioned.

The State of California now seeks to upset Congress' regulatory framework to permit itself and other states—not the FERC—to dictate the conditions under which long

[3]California argues in its Petition, as it did below, that the FPA's legislative history does not support the Court's ruling in *First Iowa*. Pet. at 16-17. The State is presenting a reprise of the same legislative history arguments, based on the same materials, that this Court rejected in *First Iowa*. The Court does not ordinarily grant certiorari simply to review again legislative history arguments that it studied and rejected before. The Ninth Circuit recognized correctly that the State's tired re-run offers no new insights into Congress' intent in 1920 when it adopted the FPA. *See* 877 F.2d at 749-50, Pet. App. A-12 to A-13.

established power projects on the nation's rivers will be allowed to operate. Yet California seeks this massive retroactive policy reversal not from Congress, which chartered FERC's sweeping mandate of federal authority, but from this Court, in the guise of re-interpretation of Congress' intent.

Nothing has happened in the forty-three years since this Court's ruling in *First Iowa* to modify this Court's perspective on what Congress intended when it adopted the Federal Power Act in 1920. This Court had available then the same indicia of original legislative intent it has now. Moreover, Congress, through its decision not to tamper with the balance of federal authority struck in the FPA, has ratified and concurred in this Court's frequently reiterated conclusion that Congress intended for the FPC to exercise comprehensive federal authority. If, as the State of California now implies, circumstances require the states to have authority to veto decisions by FERC, Congress is free to recast FERC's authority. On questions of statutory interpretation, this Court defers to Congress to amend a statute to meet perceived changes in the nation's needs. *See Patterson v. McClean Credit Union*, 491 U.S. ____, 109 S.Ct. 2363, 2370 (Kennedy, J.) & 2385 (Brennan, J., concurring) (1989) (special justification required for departure from *stare decisis* on matters of statutory interpretation). This Court should decline California's revisionary invitation here to amend the Federal Power Act by ignoring: (1) the circumstances of the Act's adoption; (2) the reliance on the Act's uniform interpretation for over 40 years; (3) and the continuing availability of the political process to address any changes in circumstances that may argue for changes in the allocation of federal and state authority.

II.

CALIFORNIA V. UNITED STATES, CONSTRUING THE RECLAMATION LAW, OFFERS NO GUIDANCE FOR THE DECISION OF THIS CASE

California's arguments in its petition boil down to one issue: should this Court overrule *First Iowa* and more than 40 years of Supreme Court precedents and administrative practice so that the State of California can assume control

over hydroelectric power projects already constructed or planned for construction? In asking this Court to overrule its decision in *First Iowa*, California ignores the vast differences between Congress' 1902 program for reclamation of arid lands and its 1920 program for federal administration of hydroelectric projects. The State of California places great reliance on the Court's decision in *California v. United States*, 438 U.S. 645 (1978) (the *New Melones* case), which required the Secretary of the Interior to conform to state law in administering irrigation projects under the 1902 Reclamation Law.

New Melones is not a proper guide for the decision of this case. It was governed by the Reclamation Law of 1902; this case is governed by the Federal Power Act of 1920. The historical forces that produced the two acts and the problems they were designed to solve were quite different. The Reclamation Law was originally intended to conquer the desert by bringing irrigated agriculture to arid western lands. It created a public works program in which the federal government supplied the otherwise absent capital for irrigation development. The Bureau of Reclamation built and operated the projects within the framework of a state legal system that provided the water rights and authorized the organization of water districts that obligated themselves to pay construction, operating and maintenance costs.[4] In the absence of state law, there was no project.

The Federal Power Act stands in stark contrast to the Reclamation Law. The FPA is a regulatory statute, in the tradition of the Interstate Commerce Act of 1887, 24 Stat. 379 (1887) (which established the Interstate Commerce Commission) and the Federal Trade Commission Act of 1914, 38 Stat. 717 (1914) (which established the Federal Trade Commission) and was a forerunner of the regulatory agencies of the 1930s. The purposes of the FPA were three-fold: (1) to promote hydroelectric power on federal lands and on navigable waterways controlled by the federal government; (2) to give preference to public entities such as municipalities

[4]The Turlock Irrigation District and Modesto Irrigation District do not receive any Bureau of Reclamation water.

in the use of the power; and (3) to capture for the government some of the economic rents of water power, first by charges to licensees and second by recapture provisions upon expiration of licenses. This pervasive regulatory scheme could and did provide protection in Section 27 for vested water rights established under state law. It had no room for supervening regulation of the projects by state administrative agencies.

The State of California would like to persuade this Court, with "revisionary zeal," *see California v. United States*, 438 U.S. 645, 693 (1978) (White, J., dissenting), to change the law, as it purportedly did in the *New Melones* case. But the State's premise is wrong. *New Melones* did not change the law; it restored to Section 8 the meaning it had from 1902 to 1958 and repudiated the apparent departures from that meaning appearing in dicta in the late 1950s. Until then federal-state relations under the Reclamation Law followed a familiar, well-worn path for more than 50 years from the Law's enactment in 1902—a path marked by milestones such as *Nebraska v. Wyoming* and *Gerlach*, in which the Court routinely rejected claims of federal supremacy and reaffirmed deference to state law mandated by Section 8 of the Reclamation Law. *See United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950); *Nebraska v. Wyoming*, 325 U.S. 589 (1945).

Only when patently insupportable claims under state law were advanced did this Court—unnecessarily—depart from deference to state law under Section 8. Thus in *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958), the petitioner, in a brazen attempt to evade acreage restrictions imposed by the 1902 Act, asserted that state law forbade such restrictions. Unfortunately, instead of giving the simple answer that Section 5 of the 1902 Act set forth a specific congressional directive that was intended to override any contrary provision of state law, the Court undercut Section 8 and its deference principle. The achievement of the *New Melones* case was to point out the unnecessary deviation from prior decisions represented by *Ivanhoe* and to restore the principle of deference embodied in Section 8.

The FPA has no comparable legal history. From the time this Court first spoke in 1946, in *First Iowa*, the Act has been characterized as a pervasive licensing and regulatory system administered exclusively by a federal agency. There is no occasion for this Court to re-examine the FPA because, unlike Section 8, its interpretation has been uniform and unbending in respect to the necessity of federal supremacy.[5] The Reclamation act did not preempt state law; with reclamation projects Congress intended the Bureau of Reclamation to accommodate state law. In stark contrast, the Federal Power Act was the product of a heated and bitter debate in which the need for power was balanced against the need for conservation by placing all projects governed by the act under the exclusive regulatory control of the Federal Power Commission. The role of conflicting state regulation was specifically addressed in the debate in Congress over the FPA and Congress deliberately chose to preempt such conflicting state rules by dividing control by subject matter and giving each entity final authority within its jurisdiction. *See First Iowa*, 328 U.S. at 167-68. Congress decided to protect against the risk that states would veto projects that satisfied federal requirements. *See id.* at 164. Thus, the FPA is not an example of legislation where Congress' preemptive intent was unclear; Congress clearly chose for federal authority to preempt overlapping state regulation.[6] The states and their

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[5]This Court has repeatedly relied on *First Iowa* to reaffirm that the FPA preempts all state regulation of hydroelectric power projects licensed by the FERC. *See* Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n, 461 U.S. 190, 223 n.34 (1983); New England Power Co. v. New Hampshire, 455 U.S. 331, 338 n.6 (1982); *see also* Escondido Mutual Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765, 773 (1984). These recent rulings simply carry forward this Court's longstanding and consistent interpretation of the FPA ever since its ruling in *First Iowa*. *See, e.g.*, FPC v. Union Electric Co., 381 U.S. 90, 97-99 (1965); Sperry v. Florida, 373 U.S. 379, 385 & n.4 (1963); Tacoma v. Taxpayers of Tacoma, 357 U.S. 320, 334 (1958); Federal Power Comm'n v. Oregon, 349 U.S. 435, 444-45 & nn.15, 16 (1955).

[6]The evidence of preemption is clear in this case. The Court in *First Iowa* reviewed the language and legislative history of the Federal Power Act and concluded that Congress intended "to secure a comprehensive development of national resources and not merely to prevent obstructions to navigation . . ." 328 U.S. at 181. The Court thereby distinguished the FPA from the Rivers and Harbors legislation cited by the State in its

agencies have ample opportunity to voice their concerns through appearances before the Commission, and through their continuing authority over the proprietary matters as discussed by the Court in *First Iowa*.

The State's position in this case comes down to a naked assault on established, heretofore unchallenged law. *New Melones* offers no comfort, for it *restored* the Reclamation Law's historical meaning by reaffirming the first 50 years of interpretation of that Law. Yet the State would use *New Melones* to overturn 40 years of settled interpretation and administration of the FPA. In short, the State would expand *New Melones* beyond recognition in order to gain control over hydroelectric projects—a control that Congress never intended the states to have and that no court has ever validated.

III.

CALIFORNIA'S POSITION MAKES NO PRACTICAL SENSE AND DOES NOT NECESSARILY LEAD TO GREATER PROTECTION OF FISHERIES

California argues in this action that it has exclusive authority to regulate minimum project flows at a FERC-licensed hydroelectric facility in order to impose more stringent requirements on the operator than FERC has imposed. California implies in its Petition that such exclusive regulation of flows by the states is workable, does not infringe upon the FERC's prerogative, and will lead to greater protection of fish. Yet, in fact, California's proposed "state preemption" makes no practical sense, directly infringes on the regulatory prerogative that Congress intended FERC to exercise, and

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Petition for the proposition that federal and state authorities have dual authority over matters in navigable waters. *See* Pet. 19-20. The Court concluded that, "The detailed provisions of the Act providing for the federal plan of regulation leave no room or need for conflicting state controls." *First Iowa*, 328 U.S. at 181. There is no question that regulation of project releases—the point of dispute in the instant case—is an integral part of FERC's regulatory task under the FPA. Therefore, it is clear that California's conflicting proposals must give way under established preemption doctrine.

merely transfers final decisionmaking authority from FERC to the states without any assurance that states will be any more or less protective of fish than the FERC.

A. California's Interpretation Of The FPA Is Unworkable.

Both Congress and this Court recognized the practical problems that inhere in a system in which two separate decisionmaking entities have the right independently to set the parameters for operation of hydroelectric projects. California here is advocating precisely the veto power and overlapping jurisdiction that Congress sought to eliminate with the comprehensive program of federal regulation created in the Federal Power Act. The Court construed the FPA in *First Iowa* as preemptive of state laws that conflict or interfere with the FPC's regulatory authority at FPC-licensed projects precisely to prevent a state from exercising a veto: "Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the State the 'comprehensive' planning which the Act provides shall depend upon the judgment of the Federal Power Commission or other representatives of the Federal Government." 328 U.S. at 164. The Court stated: "A dual final authority, with a duplicate system of state permits and federal licenses required for each project, would be unworkable. 'Compliance with the requirements' of such a duplicated system of licensing would be nearly as bad." *Id.* at 168.

California attempts to gloss over the unworkability of state regulation of FERC project flows by arguing here that it is not interested in obtaining veto power over FERC-licensed projects. *See, e.g.*, Pet. 23-24. The State argues that it is not infringing on FERC's prerogative when it sets more stringent conditions than FERC, Pet. 24, an argument which the Ninth Circuit rejected as, in effect, a veto of the project. 877 F.2d at 749; Pet. App. A-12. Veto, in the sense of "forbid," may not be the State's usual objective, but displacement of any other authority certainly is. When FERC sets 100 cfs of water for fish, it is simultaneously assuring the availability of the remaining supply for other uses. When the State Board sets 200 cfs for fish, it is allocating 100 cfs less

for other uses than FERC ordered. The basic mistake of the State's thinking is revealed in the statement that the State has set more stringent conditions and hence there is no conflict between the State Board's order and FERC's order. The test is not how stringent are the requirements for fish; rather, conflict occurs because of differences between the State Board and FERC over amounts of water allocated for different uses. The State Board's more stringent requirement for fish is an invasion of FERC's requirements for power. Each state agency has had the opportunity to fight out before FERC the amount of water to be released for fish. The fight is a charade if, after losing, the state agency imposes its desires anyway.[7]

This Court clearly recognized in *First Iowa* the same ploy attempted here by the State of California: "Compliance with State requirements that are in conflict with federal requirements may well block the federal license." 328 U.S. at 167. Congress intended for FERC to draw the line in setting conditions for operation of hydroelectric facilities, between environmental requirements and economic feasibility.[8] Yet the position the State of California is advocating here effectively makes all terms and conditions of FERC licenses superfluous because the State can specify its own construction conditions and operating conditions. Obviously, neither Congress nor this Court envisioned states playing such a role at FERC-licensed projects.

[7] *Amici* American Rivers, et al. contend that imposition of state-mandated minimum flows at FERC licensed projects is analogous to Army Corps of Engineers participation in regulating water pollution at hydroelectric projects. Brief of Amici Curiae American Rivers et al., at 17-18. Such Army Corps participation is the result of Congress' "radical change in legislative policy" wrought in the Federal Water Pollution Control Act Amendments of 1972, *see* Monongahela Power Co. v. Marsh, 809 F.2d 41, 45 (D.C. Cir.), *cert. denied*, 484 U.S. 816 (1987), and sheds no additional light on Congress' intent in the entirely separate legislation at issue in this case—the FPA—which this Court definitively construed in *First Iowa*.

[8] Indeed, FERC concluded in this case that the state's recommended minimum flows would jeopardize the economic feasibility of the Rock Creek project by causing "Rock Creek to suffer an extended span of substantial financial loss during the license term." Pet. App. A-20 to A-21.

Unlike FERC, the states are not charged with balancing the need for power against the need for promotion of fisheries. If FERC is construed as having exclusive control over power, and the State has exclusive jurisdiction to promote fisheries, no agency will ever balance these interests.

B. State Regulation Of Stream Flows At FERC-Licensed Projects Will Not Lead To Greater Protection And Enhancement Of Fish.

California also tries to make its extreme position palatable by implying that exclusive state authority over stream flows will lead to greater protection and enhancement of fish for recreational and commercial purposes. California suggests in its Petition that the purpose of its more stringent minimum flow requirements for the Rock Creek project is to protect trout, a recreational fish. Pet. at 3. Nevertheless, the State's proposed interpretation of the FPA will not necessarily operate to advance greater protection and enhancement of fish either within or outside California.[9]

The State's interpretation of the FPA would simply shift decisionmaking prerogative from the FERC to the states; yet Congress specifically left the final decision with FERC in enacting the Electric Consumer Protection Act of 1986, Pub.L. No. 99-495, 100 Stat. 1243, which amended portions of the FPA. Such a shift would not necessarily lead to enhanced fishery protection. The FERC is equally obligated by a host of laws and regulations to protect fishery resources. Such concerns are an integral factor in its decision to regulate minimum flows. The fact that the State is unhappy in this particular instance with the FERC's resolution of such issues is not sufficient reason to upset the entire system of federal regulation.

[9] *Amici* American Rivers et al. advance a different, result-driven, argument that ignores the terms of the FPA and Congress' intent. They contend that the level of minimum project flows that most promotes fisheries, set either by a state or by FERC, should apply to FERC projects. *Amici* Brief, at 6. The American Rivers position fails to balance the need for power with the need to promote fisheries; it would authorize a state to divert water to fish that the FERC would use for power. Such state authority could be used to render impracticable any FERC project.

Indeed, the rule advanced by California here could easily result in less protection for fish, particularly in states other than California that may have fewer resources to allocate to protect fish and less inclination to weigh the balance in favor of fish over people and economic development.

Thus, the State of California's interpretation of the FPA is cumbersome and unworkable because of the state veto problems recognized by Congress and this Court. In addition, the State's position will not necessarily advance and may well hinder the protection and enhancement of the nation's fishery resources. In short, the State's position is contrary to Congress' intent, reflects bad policy and should be rejected.

The State makes no bones about the broad objectives it has in seeking to overturn *First Iowa* in this litigation. Its aims are not confined to low-head hydroelectric projects. The principal objective of the State is to oust FERC from a meaningful role in the licensing and oversight of all hydroelectric power projects—proposed and existing—and replace the federal agency with the State Board. Once this power play has been effectuated, the State Board will invoke the public trust as announced by the California Supreme Court in *National Audubon Society v. Superior Court*, 189 Cal. Rptr. 346, 33 Cal. 3d 419, 658 P.2d 709 (1983), *cert. denied*, 464 U.S. 977 (1983). Relying on the public trust, which arguably reaches every trickle of water in the state and perhaps the snowpack as well, the State Board means to rewrite the FERC licenses to its own taste, without regard to bond obligations, federal recapture rights, or FERC orders designed to implement a comprehensive plan for the development of federal waterways. This is not even a "dual" system of control—water cannot be released at 100 cfs and at 200 cfs at the same time. A single authority must decide how much water goes to fish, how much to power and other uses. The State of California claims that authority in this case, but Congress and this Court lodged the power in FERC, where it should remain.

IV.
CONCLUSION

California's petition for a writ of certiorari should be denied.

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Respectfully submitted,

GIBSON, DUNN & CRUTCHER
JOEL S. MOSKOWITZ*
GREGORY J. KERWIN
1801 California Street,
Suite 4200
Denver, Colorado 80202
(303) 298-7200

Attorneys for *Amici Curiae*,
the Modesto Irrigation District
and Turlock Irrigation District

**Counsel of Record*

Of Counsel:
WARREN F. GANT, *General Counsel*
Modesto Irrigation District

ROGER K. MASUDA, *General Counsel*
Turlock Irrigation District